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Chair: Mr. Ali Ehsassi



Standing Committee on Foreign Affairs and International Development

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• (1105)

[English]

The Chair (Mr. Ali Ehsassi (Willowdale, Lib.)): I call this meeting to order.

Welcome to meeting number 131 of the House of Commons Standing Committee on Foreign Affairs and International Development. Today's meeting is taking place in a hybrid format, and I'm told by the clerk that connectivity tests have been undertaken.

I'd like to remind participants and members of the following: Please wait until I recognize you by name before you speak. All comments should be made through the chair. Members, please raise your hand if you wish to speak, whether participating in person or via Zoom. The clerk and I will manage the speaking order as best we can.

Pursuant to the order of reference of Wednesday, June 5, 2024, the committee is resuming consideration of Bill C-353, the foreign hostage takers accountability act. We will begin the clause-by-clause consideration of the bill.

With us today we have many experts, and we're very grateful to all of them for appearing before us. From the Canada Border Services Agency, we have Mr. Derek Janhevich, director, inadmissibility policy division; Mr. Scott Nesbitt, general counsel, legal services unit; and Mr. Jeff Robertson, manager, inadmissibility policy division.

From the Department of Finance, we have Mr. Jeremy Weil, senior director of financial crimes governance and operations.

From the Department of Foreign Affairs, Trade and Development, we're grateful to have back with us Mr. Vasken Khabayan, acting executive director for sanctions policy and sanctions outreach, compliance and enforcement; Ms. Toby Schwartz, director of consular policy, arbitrary detention and hostage affairs; and Ms. Richelle Smockum, deputy director, emergency management policy and international critical incidents.

From the Royal Canadian Mounted Police, we're grateful to have with us Chief Superintendent Denis Beaudoin, director general of federal policing and the national security division.

Last, but certainly not least, we're also grateful to have with us here for guidance today two legislative clerks, Mr. Jacques Mazide and Madame Michelle Legault.

I'd like to provide members of the committee with a few comments on how the committee will proceed with the clause-by-clause consideration of Bill C-353.

As the name indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing it, who may explain it.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond the scope of the bill, both of which are adopted by the House when it agrees to the bill at second reading, or if they offend the financial prerogatives of the Crown.

Amendments have been given a number in the top right corner to indicate which party submitted them. There is no need for a second order to move an amendment. Once it is moved, you will need unanimous consent to withdraw it.

During debate on an amendment, members are permitted to move subamendments. Approval from the mover of the amendment is not required. Subamendments must be provided in writing. Only one subamendment may be considered at a time, and that subamendment cannot be amended.

When a subamendment is moved to an amendment, it is voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Finally, if members have any questions regarding the procedural admissibility of amendments, the legislative clerks are here to assist the committee; however, they are not legal drafters. Should members require assistance with drafting a subamendment, they must contact the legislative counsel.

I thank the members for their attention, and I wish us all a productive clause-by-clause consideration of Bill C-353.

Before we get into it, I would like to advise the members that thanks to the efforts of the clerk, Minister Joly has confirmed that she will be appearing on December 12 for one hour.

Thank you for that.

Now we're going to go through the clause-by-clause consideration. Pursuant to Standing Order 75(1), consideration of clause 1, which is the short title of the bill, and a vote on the preamble are postponed.

(On clause 2)

The Chair: Shall clause 2 carry?

• (1110)

Hon. Robert Oliphant (Don Valley West, Lib.): No.

The Chair: Do we want to do it on division or a recorded division?

Go ahead, Mr. Oliphant.

Hon. Robert Oliphant: I think the committee should be advised that we'll be voting against all the clauses of this bill, so whatever is most expeditious would probably be helpful. We're fine to go with a recorded division and we're fine to go with "on division" in an unrecorded vote, if that's appropriate.

The Chair: Go ahead, Mr. Aboultaif.

Mr. Ziad Aboultaif (Edmonton Manning, CPC): On the other hand, we will be voting for every clause of this bill.

The Chair: Go ahead, Mr. Bergeron.

[Translation]

Mr. Stéphane Bergeron (Montarville, BQ): I am comfortable proceeding with the recorded division.

[English]

The Chair: Ms. McPherson, are you okay with "on division"?

Ms. Heather McPherson (Edmonton Strathcona, NDP): Yes.

The Chair: Okay. For clause 2....

Yes, go ahead, Mr. Oliphant.

Hon. Robert Oliphant: I don't understand. Is it on division in favour of it or on division...?

The Chair: I think she wants to do it on division.

An hon. member: Is that in favour or against?

The Chair: I'm sorry...?

An hon. member: Is it in favour or against?

The Chair: It's in favour.

We'll do it by show of hands, if that's okay with everyone.

Hon. Robert Oliphant: I believe we'll need a recorded division, then.

The Chair: We'll have recorded division.

Shall clause 2 carry?

(Clause 2 agreed to: yeas 6; nays 5)

Shall clause 3 carry?

(Clause 3 agreed to: yeas 6; nays 5)

The Chair: Shall clause 4 carry?

(Clause 4 agreed to: yeas 6; nays 5)

The Chair: Now we'll go to clause 5.

Shall clause 5 carry on recorded division?

Go ahead, Mr. Bergeron.

• (1115)

[Translation]

Mr. Stéphane Bergeron: I must admit I'm a little confused. I see there's an amendment to section 5.1. Shouldn't we study the amendment before studying the section itself?

[English]

Hon. Hedy Fry (Vancouver Centre, Lib.): Yes, before the clause carries, we have to do the amendment. It's before we do the clause.

The Chair: I've been advised by the legislative clerk that 5.1 is entirely new, a proposed new clause. First we have to do clause 5 and then move to proposed clause 5.1.

[Translation]

Mr. Stéphane Bergeron: Isn't it true that section 5.1 risks being amended by subsection 5.1(1) and that, consequently, we may have a different opinion of section 5.1?

Legislative Clerk (Mr. Jacques Maziaide): This is not the case, because section 5.1 is a completely separate section from section 5. There will be some interrelations, but it's a completely different article. The committee will vote on the two amendments to the new article 5.1, because there are two of them.

Basically, it's as if they were articles 6 and 7, but, as article 6 already exists, the new article comes in between articles 5 and 6.

[English]

The Chair: Okay.

(Clause 5 agreed to: yeas 6; nays 5)

The Chair: We'll now go to proposed clause 5.1.

We'll go to Madam McPherson to move it.

Ms. Heather McPherson: Mr. Chair, forgive me, but I'm a little bit out of practice. Would you like me to read through the clause before I give you my rationale, or how would you like me to proceed?

The Chair: You could read it, and then follow that with your rationale, please.

Ms. Heather McPherson: All right. It is that Bill C-353 be amended by adding after line 2 on page 6 the following new clause:

5.1 (1) Any order or regulation made under subsection 5(1) must be evidence-based and outline the rationale for determining that a foreign national, foreign state or foreign entity has acted as described in subsection 5(2) and must be redacted to remove any classified or sensitive information.

(2) Before making an order or regulation under subsection 5(1), the Governor in Council must implement robust identity verification measures, including the verification of date of birth, place of birth and national identification number of foreign nationals, to prevent the wrongful inclusion of a foreign national, foreign state or foreign entity in an order or regulation.

(3) Any order or regulation made under subsection 5(1) is subject to judicial review to ensure compliance with Canadian law, the Canadian Charter of Rights and Freedoms and Canada's international obligations.

The reason that we have brought forward this amendment is that we are actively trying to prevent an individual from being unfairly designated as a “foreign national” and being unfairly designated as somebody who would be subject to sanctions. This amendment would require the government to use a more robust identity verification process, relying on multiple data points, like date of birth and place of birth, national identification and name spelling, to confirm someone's identity.

Under the current language, there is a risk that someone could be targeted because their name or partial details match those of someone else. We have seen this, and this is a particularly acute concern for individuals from certain racial, ethnic or religious communities where names may be more likely to overlap or be transliterated inconsistently.

There is, within this legislation, a real danger of racial or religious profiling disproportionately affecting those with ethnic or religious significant names.

We did hear testimony from Chief Superintendent Denis Beaudoin, who's here today with us, highlighting the critical gaps in the bill that could lead to systematic bias. He emphasized the broad discretionary powers granted to the Minister of Foreign Affairs without clear safeguards against profiling and the risk of misidentifying and unfairly targeting individuals.

• (1120)

The Chair: Thank you very much for that, Madam McPherson.

Next is Mr. Aboultaif, and then we'll go to Mr. Bergeron.

Mr. Ziad Aboultaif: Thank you, Chair.

I'm happy to support this amendment, subject to one small, tiny amendment to line 4 under paragraph 2, to replace the word “including” with “which may include”.

If Madam McPherson accepts that, we will be happy to support this.

Ms. Heather McPherson: For my understanding, I just want to get some clarity on that. Is it by adding in paragraph 2 “may include” instead of “including”?

Mr. Ziad Aboultaif: Yes. It's to replace “including” with “which may include”.

Ms. Heather McPherson: Then that would make it a much less strong change, because it would mean that whether or not that was included would be optional. The whole point of this is that it is not optional and that we need to have more than one data point to protect individuals from being falsely accused, so we would not—I would not—accept that change.

The Chair: First I have to go to Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: I'd like to ask Ms. McPherson two questions.

[*English*]

Hon. Robert Oliphant: I have a point of order.

I just want to clarify whether that was a subamendment or not, because it was presented sort of as a subamendment. We don't have

such a thing as consent of the mover of an amendment to adopt it in committee. Under the Standing Orders, it would have to have been a subamendment, because we can't simply turn to a mover to suggest that they agree and that it would be okay. That is not parliamentary procedure.

I just need clarification. If it was a subamendment, then we should vote on it. If it's withdrawn or if it was not a subamendment and was a conversation point, that's a little different.

It was clearly presented as a subamendment, but I didn't hear the chair refer to it as a subamendment.

The Chair: Mr. Aboultaif, was that a subamendment?

Mr. Ziad Aboultaif: It is a subamendment. I just had to ask the presenter if she was in agreement with it before I tabled it.

Hon. Hedy Fry: You don't have to. You don't have to.

Mr. Ziad Aboultaif: I'm asking the chair.

The Chair: Then you're not withdrawing it at this point, Mr. Aboultaif. You have no intention to withdraw it.

Mr. Ziad Aboultaif: No.

The Chair: Mr. Bergeron, are you speaking to the subamendment?

[*Translation*]

Mr. Stéphane Bergeron: As I understood it, Ms. McPherson was simply expressing her disagreement with the proposed subamendment, which is perfectly in order.

When we come back to the amendment, I'd like to ask Ms. McPherson two questions.

[*English*]

The Chair: Go ahead, Mr. Epp.

Mr. Dave Epp (Chatham-Kent—Leamington, CPC): Speaking to the subamendment—and I believe it is being emailed—the rationale is that with requiring absolutely every single one of those identifiers, it would be virtually impossible to impose any sanctions. I would invite our officials to comment on that.

I hear where Ms. McPherson is coming from in trying to make sure that there are enough safeguards so that we don't misidentify, but at the same time, we also don't want to completely gut the process of sanctions.

We are a little reliant upon our officials to make that determination. I would ask them to comment.

The Chair: Mr. Beaudoin, you have the floor.

Chief Superintendent Denis Beaudoin (Director General, Federal Policing, National Security, Royal Canadian Mounted Police): I'm happy to comment.

I think my colleagues from GAC and the sanction regime are better placed, because those are not RCMP decisions; they are Governor in Council decisions.

I'll turn it over to the sanctions people at GAC.

Mr. Vasken Khabayan (Acting Executive Director, Sanctions Policy, and Sanctions Outreach, Compliance & Enforcement, Department of Foreign Affairs, Trade and Development): Thank you very much.

I haven't seen a copy of the amendment, so I'll take a look at it as well.

If I recall correctly what Madam McPherson suggested, under our sanctions regime, we currently do as much robust identification as we can. We look for all sorts of biographical information, but all of our information is from open source evidence. If it's not available under an open source, then we cannot obtain that information.

It would also make it a bit difficult, in some cases, to obtain certain types of biographical information from other countries that are obviously not going to co-operate with us in terms of providing that information.

Again, I haven't seen the full amendment. If I have a chance to review it, I can provide further guidance.

• (1125)

The Chair: Go ahead, Mr. Epp.

Mr. Dave Epp: If I could follow up, the three pieces of information that are either mandatory, or not, are date of birth, place of birth and the national identification number. I would assume that the national identification number would be the hardest one to get from an unco-operative other government.

My question is this: Through an order in council on the imposition of sanctions, have you ever been able to get all three? How often are you able to get all three in order to impose sanctions?

Mr. Vasken Khabayan: Again, we use open source intelligence, and I have seen occasions when we've had all three. It's very rare, though. It is highly unlikely that we would be able to obtain, through open source information, national identification numbers, if they exist for that particular country. Concerning date of birth and place of birth, we try to get as much as possible. Current location is probably more likely to be what we get.

Again, it would be highly problematic to obtain all three simultaneously in every situation.

Mr. Dave Epp: If that becomes mandatory under this clause, imposing sanctions virtually becomes impossible, if I hear you correctly, other than in the rare cases when you're able to get all of that information. The amendment as written right now, without the sub-amendment, would make it almost impossible to impose sanctions.

Mr. Vasken Khabayan: It would be very difficult for us to do so in every situation in which we currently have sanctioned people. Again, without particulars of any situation, I can't comment beyond that.

Mr. Dave Epp: Thank you, Mr. Chair.

The Chair: Go ahead, Mr. Oliphant.

Hon. Robert Oliphant: I will speak against the subamendment. I will be speaking against the amendment as well.

Every witness we had, except two, indicated that this legislation was unnecessary and mostly agreed that it was also unhelpful and perhaps dangerous. I think that even amending it at this stage and subamending it to try to improve it does not improve it. It could perhaps make it even worse than it is as it stands.

We will be voting against the subamendment and then subsequently, whether it's amended or not, we'll be voting against the amendment, based on the witness testimony we heard from all of the witnesses except two, who we believe were not very helpful witnesses. All of the expert witnesses said that a legislative solution to these issues was not helpful and in fact could pose more dangers to the system.

Thank you.

The Chair: All our witnesses have a copy now.

Did anyone have anything further to add?

Mr. Dave Epp: To what?

The Chair: Does anyone have anything further to add to the question posed by Mr. Epp?

Mr. Vasken Khabayan: We only have a copy of the subamendment. I don't have a copy of the amendment itself.

Hon. Robert Oliphant: On a point of order, could I ensure that the witnesses who are here to help our committee have a copy of the things we received? I believe the clerk should send them to the expert witnesses who are coming to help us.

We have these four amendments—NDP-1, NDP-2, NDP-3 and NDP-4—which I think should have been sent to the officials for them to be helpful for us today.

• (1130)

The Chair: We might as well suspend for a few minutes to get things in order.

• (1130)

(Pause)

• (1140)

The Chair: We will now resume.

I hope everyone has received a copy of the amendments and has had a chance to review them.

Are there any interventions on the subamendment?

There are not. Let's have a recorded vote on the subamendment.

(Subamendment negated: nays 7; yeas 4)

The Chair: We will now go the amendment itself, with a recorded vote.

Go ahead, Mr. Bergeron.

[Translation]

Mr. Stéphane Bergeron: Mr. Chair, I'd like to ask Ms. McPherson two questions. First, I understand that there is a second series of amendments related to subsection 5.1(1). I'd like to know what her intentions are in this regard.

Furthermore, one of the objectives of her first amendment, which is currently being debated, is to provide for a judicial process. However, we note that such a process is provided for in section 8 of the bill.

How is the judicial process introduced in subsection 5.1(3) different from that provided for in section 8?

[English]

The Chair: Go ahead, Ms. McPherson.

Ms. Heather McPherson: Thank you, Mr. Chair, and thank you to my colleague for the question.

First of all, we have the second clause, and we will not be moving our second amendment. It's very similar to the amendment that we moved. If this doesn't pass, we won't move the second one. Either way, I don't think we will be moving the second one.

In terms of the questions, the level of responsibility within the clause that we've brought forward is the key here. At this level, we need multiple checkpoints to ensure that the identity is accurate. That is the goal of our amendment. We think this makes the bill much stronger, because it ensures that no one is harmed by being misidentified.

We've heard from the testimony of the experts that it is a difficult process. All of us as Canadians should agree that it should be a very difficult process to ensure that identity is accurate.

• (1145)

The Chair: Are there any further explanations?

We will now proceed to a recorded vote on the amendment.

(Amendment negated: nays 9; yeas 2)

The Chair: To be clear, Ms. McPherson, did you want to move the second amendment?

Ms. Heather McPherson: No, I did not.

The Chair: Thank you for that.

We will now go to a recorded vote on clause 6.

(Clause 6 agreed to: yeas 6; nays 5)

Hon. Robert Oliphant: I have a point of order.

I don't know whether this is possible or not, because I've never done it before, but I'm wondering whether we would agree to apply the vote that was done on clause 6 through clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, up to and including 18, with the Liberals voting against.

The Chair: Is everyone in favour of proceeding that way?

(Clauses 7 to 18 inclusive agreed to on division)

(On clause 19)

The Chair: Madam McPherson, did you want to move a motion?

• (1150)

Ms. Heather McPherson: Yes, thank you, Mr. Chair.

The amendment NDP-3 we're bringing forward is that Bill C-353, in clause 19, be amended by replacing line 3 on page 11 with the following:

“cant, confirming the error, and provide the applicant with written reasons for the determination; or”

The amendment also replaces line 5 on page 11 with the following:

“to the applicant of the determination that includes the written reasons for the determination, the evidence and criteria relied on — subject to restrictions in the interest of national security — and the rules of evidence applied.

(3) The applicant has the right to request, from a court of competent jurisdiction, a review of the Minister's determination within 30 days of receiving the notice under paragraph (2)(b). The court must issue a decision within 30 days of receiving the request.”

Mr. Chair, the reason we have brought this forward is to help with the appeal process for false appointments of mistaken identity.

We already know that there have been challenges with this process. The appeal process to ensure that there is a fair and timely way for individuals to challenge their designation if they believe it to be unjust is important.

Being labelled a foreign national under this bill could mean severe restrictions on one's rights and resources. Providing a pathway for appeal through an independent tribunal ensures that people have recourse to correct errors and to defend themselves. Without this amendment, the bill risks violating the principles of due process and justice.

Thank you.

The Chair: Thank you.

Does anyone want to speak to that?

We will vote on the amendment then.

(Amendment agreed to: yeas 6; nays 5)

(Clause 19 as amended agreed to: yeas 6; nays 5)

(Clause 20 agreed to: yeas 6; nays 5)

(On clause 21)

The Chair: Madam McPherson, I understand you have an amendment.

Ms. Heather McPherson: I do, Mr. Chair. Thank you.

Our amendment is this:

That Bill C-353, in Clause 21, be amended by deleting lines 26 to 30 on page 11.

The rationale for that is that we think it is important that the section authorizing monetary rewards for information leading to the release or repatriation of hostages or detained individuals be removed.

We spoke to experts from organizations like Amnesty International and the International Civil Liberties Monitoring Group, and they identified some serious concerns that this approach, despite its goals, could inadvertently incentivize hostage-taking. Bad actors may orchestrate hostage situations to extract payments.

In our last meeting, witness Lara Symons from Hostage International also raised concerns about individuals taking advantage of monetary rewards while being complicit in the hostage-taking itself. This unintended consequence has been observed in other contexts in which reward systems have been implemented, ultimately undermining international human rights obligations and the rule of law.

UN experts have raised similar alarms about the U.S. rewards for justice program, which this section was modelled after. The U.S. program has been criticized for violating human rights by undermining due process and encouraging actions that can lead to abuses.

UN special rapporteur Alena Douhan explained that offering monetary rewards can lead to forced co-operation, denial of due process and even violations of fundamental rights, such as freedom of movement and the right to work.

It's for that rationale that we would like to bring forward this amendment.

• (1155)

The Chair: Thank you, Madam McPherson.

MP Oliphant, go ahead.

Hon. Robert Oliphant: While I appreciate the sentiment of the danger of that particular clause in the amendment, both those witnesses who were referred to by Ms. McPherson also stated that, in its entirety, the legislation was both dangerous and unnecessary.

If we go through the actual testimony from both Ms. Symons of Hostage International and Mr. Tim McSorley of the International Civil Liberties Monitoring Group, we see that they were very clear that there was no necessity for this bill under legislation and that it also had many dangers.

For the precise reason that I listened to the witnesses who were cited, we'll be voting against this amendment.

The Chair: Thank you, Mr. Oliphant.

Now we'll put the amendment to a vote for a recorded division, please.

(Amendment negatived: nays 9; yeas 2)

The Chair: We will have a recorded vote to see if it carries.

[*Translation*]

Mr. Stéphane Bergeron: I'd like to speak, Mr. Chair.

[*English*]

The Chair: Go ahead, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: Mr. Chair, I think it's important to point out that all my votes so far have been to send a message, I hope, to the government that not everything works like clockwork

in terms of how hostage-taking is handled. Once again, I thank Ms. Lantsman for bringing this issue to the attention of the House and sparking a debate that I think is extremely healthy and salutary.

However, I share Mr. Oliphant's view that the bill is complex and suffers from significant shortcomings. I will therefore be voting against section 21, the wording of which has been retained.

I will probably vote against other provisions, depending on the outcome of the votes on the amendments that will be proposed. However, I want to make it clear that, in the end, even if Ms. Lantsman's bill is not adopted by this committee, it is imperative that the government heed the message sent to it by the opposition political parties, which represent—perhaps needless to say, but I think it is sometimes worthwhile—the majority of the population.

As a result, I hope that, whatever the content of the report on the bill that the committee will present to the House—I don't want to presume the outcome of the study of this bill—and whatever happens, the government understands that everything can't simply continue notwithstanding.

Changes are going to have to be made in the way things are done, in order to take into account the concerns that have been expressed by Ms. Lantsman, by some of the witnesses and by the MPs who have spoken during the study, whether in the House or in committee.

Thank you, Mr. Chair

• (1200)

[*English*]

The Chair: Thank you, Mr. Bergeron.

We will now proceed with the vote.

(Clause 21 negatived: nays 7; yeas 4)

(Clause 22 agreed to: yeas 6; nays 5)

The Chair: We will now proceed with—

Hon. Robert Oliphant: I have a point of order.

I'm going to try, and Mr. Bergeron may have a concern over this, to apply the vote from clause 22 to clauses 23 through to 27.

Some hon. members: No.

Hon. Robert Oliphant: Okay. We'll do each one individually. That's fine.

The Chair: We will now go to a recorded vote on clause 23.

(Clause 23 agreed to: yeas 6; nays 5)

(Clause 24 agreed to: yeas 6; nays 5)

(Clause 25 agreed to: yeas 6; nays 5)

(On clause 26)

The Chair: Go ahead, Ms. McPherson.

• (1205)

Ms. Heather McPherson: Thank you very much, Mr. Chair.

I believe that clause 26 should be defeated, and I want to speak to it a little bit.

I believe that the provision creates more problems than it solves. I think it's necessary for this committee to vote down this clause.

I don't agree with offering permanent residency as an incentive for sharing information with the government. It creates a dangerous precedent. There are serious concerns about its potential to encourage false or unreliable claims. It also risks undermining the integrity of Canada's immigration system and could inadvertently create incentives for actions that don't address the root cause of hostage-taking.

Thank you.

The Chair: Thank you for that.

Would anyone else like to speak to clause 26?

(Clause 26 negatived: nays 7; yeas 4)

(Clause 27 agreed to: yeas 6; nays 5)

The Chair: Now we will go to the short title of the bill. Shall the short title carry?

Do we want to do that on division as well?

Hon. Robert Oliphant: We'd be happy to vote against the next three. The bill is a seriously flawed bill. We don't care about the short title, the preamble and the title, so if you want to accept them on division, we'll accept those three on division.

The Chair: You want to accept those on division. Okay.

Shall the short title carry?

Some hon. members: On division.

The Chair: Shall the preamble carry?

Some hon. members: On division.

The Chair: Shall the title carry?

Some hon. members: On division.

The Chair: Thank you.

Now, shall the bill as amended carry? We will have a recorded division, please.

(Bill C-353 as amended negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

The Chair: Shall the chair report the bill as amended to the House?

• (1210)

Hon. Robert Oliphant: I have a point of order.

I have sought clarity from the legislative clerk on this, and I think what we will be proposing is that we will be voting no on the bill carrying and no that the chair should report the bill to the House and no on it being reprinted.

However, we will then be presenting a motion with respect under Standing Order 97.1 that we make a report to the House regarding our consideration of the bill.

I just wanted to clarify with the legislative clerk that we can do what I'm saying. I can go through the process of Standing Order 97.1 and I have a motion related to Standing Order 97.1, but I wanted to make sure that I am clear that we could still do those three votes. They could pass or they could fail, and I think they may fail, but then we could do our motion that the committee recommends that the House do not proceed further, and that would trigger an automatic concurrence debate in the House.

The Chair: Could we go to the legislative clerk?

Mr. Jacques Maziade: Thank you, Mr. Chair.

Just on your first question, it's up to the members to vote yes or no on the three last questions.

If, as I was explaining in giving the information to the chair, the committee votes no on the question of "Shall the chair report the bill as amended to the House?", then the chair cannot report the bill as voted back to the House. It means that the bill will be deemed reported back to the House without amendments. It means that all the amendments that the committee has adopted so far will not be reported back to the House, because you don't give the chair the authority to table the report in the House.

On your last question—and correct me if I'm wrong—yes, you can move a motion afterward, according to Standing Order 97.1, telling the House not to proceed further with this bill. The House will decide what they want to do with that, but the chair will have to table the motion if the motion is adopted. It's a debatable motion.

The Chair: Okay.

Hon. Robert Oliphant: Can I speak further to that point of order?

I will be very clear that I heard the point of order. We didn't get to add to the point of order that Mr. Bergeron made.

With respect to the objects of the bill, the concerns raised by the author of the bill and the concerns raised by a couple of the witnesses we heard, I will say that we have heard this. I think that we could benefit from a concurrence debate on a deemed-reported bill. However, we would still be very loath to not listen to the expert witnesses who looked at both the lack of a need for such a bill and also the danger in this particular bill.

We will be voting no on these, but then I will be presenting such a motion under Standing Order 97.1 that then has a process, which I will explain at the next point.

Thank you.

• (1215)

The Chair: Thank you.

Go ahead, Mr. Chong.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Could the legislative clerk clarify to the committee how this committee, under Standing Order 97.1, would report to the House a report “not to proceed further with the bill, and giving the reasons therefor”? Standing Order 97.1 says that the committee must “either report the bill to the House”, amended or unamended, or report to the House “a recommendation not to proceed further with the bill, and giving the reasons therefor”. What is the procedure by which to accomplish that second option under Standing Order 97.1?

Mr. Jacques Maziade: The committee has to debate the motion. If Mr. Oliphant wants to move the motion, you debate it. If it's adopted, the motion will be—

Hon. Michael Chong: Okay. In other words, what Mr. Oliphant is proposing would lead to the following process: We would negative the question “Shall the chair report the bill to the House?”.

Mr. Jacques Maziade: It's a completely separate process.

You finish the bill, the three questions—

Hon. Michael Chong: Okay. The report, then, to the House is that the bill “not...proceed further”, “giving the reasons therefor”. That is not accomplished by adopting the motion “Shall the chair report the bill to the House?”.

Mr. Jacques Maziade: Yes, absolutely. You can first report the bill as adopted. Second, you can have the motion asking the House “not to proceed further with...”

Hon. Michael Chong: Then would the chair report two reports to the House?

Mr. Jacques Maziade: Do you mean with regard to Standing Order 97.1?

Hon. Michael Chong: If the question “Shall the chair report the bill to the House?” is adopted, then the chair will report that to the House.

Mr. Jacques Maziade: Yes.

Hon. Michael Chong: Then there would be a second report to the House under what Mr. Oliphant is proposing. Is that correct?

Mr. Jacques Maziade: Yes.

Hon. Michael Chong: Okay, thank you.

The Chair: Mr. Bergeron is next.

[*Translation*]

Mr. Stéphane Bergeron: The question before us is whether the committee directs the chair to report the bill as amended to the House.

Does the chair also have to report the fact that the bill was not passed in committee?

Mr. Jacques Maziade: This matter is not included in the final report. The chair will report on the amendments adopted and the articles rejected. It is only on this that the chair reports to the House.

The question of whether the bill as amended is adopted allows committee members to debate the final form of the bill.

Mr. Stéphane Bergeron: The House is therefore not informed that the bill was rejected in committee.

Mr. Jacques Maziade: The House is informed of the decisions you have made to date.

Mr. Stéphane Bergeron: Does this include the fact that we rejected the bill in committee?

Mr. Jacques Maziade: No, that is not included in the report.

Mr. Stéphane Bergeron: That's rather strange.

Mr. Jacques Maziade: We've had discussions about this before, but that's the procedure.

[*English*]

The Chair: That's time.

Hon. Michael Chong: I have a point of order again.

I just want a clarification that you can make two reports to the House. If you read the standing order, it suggests that you cannot, Mr. Chair. The standing order says “either [the chair reports] the bill to the House”, amended or unamended, “or” the chair reports that the committee recommends that the House “not...proceed further with the bill, and [provides] the reasons therefor”.

It's not both. You can't do both.

Mr. Jacques Maziade: The standing order says that you have to report within 60 sitting days. If you don't report back, it's deemed reported back without amendment. That is the rule.

If the committee doesn't agree with the bill itself, and if, as Mr. Oliphant says, we put in brackets “We don't like the bill,” he can move a motion to tell the House that we don't like this bill if the motion is adopted by the committee. You can do that. You can report back all of your decisions.

At the same time, you can say that the committee....

• (1220)

Hon. Robert Oliphant: I think I have come to the understanding of what this is about. In practice, only the House can ultimately deem the final form of a bill. Committees cannot. Therefore, all we are doing is looking at the bill, recommending amendments to it and reporting to the House that we've considered it with amendments and are sending it back for third reading. We can't—though I think we should be able to—vote against the bill and have it not be reported back to the House. If we don't report, it's deemed reported anyway, because the House has final disposition of the bill.

There's a counterintuitive part to this. When it comes to, "Shall the bill carry?" we vote no or yes to that, and if it's a no, it is simply reported back that we considered the bill. It's not reported back that we considered it and said no. The only way to do that is through a separate motion, a separate report under Standing Order 97.1.

I've had to really learn that, because I've never had to do this one before, even as a chair of a committee.

I do have a motion ready that would allow us to report that back. The alternative method for a committee to recommend that a bill not proceed is by way of a second report to the House. On the procedure, what I understand is that.... I'm going to read this. It's from *House of Commons Procedure and Practice*, chapter 16.

The committee is bound by its order of reference—the bill—and may only report the bill with or without amendment to the House.

On the other hand...there's nothing to prevent a standing committee, under its permanent mandate in the Standing Orders, from presenting [a separate] report in which it sets out substantive recommendations with respect to the subject matter of the bill. On a number of occasions, a committee has presented a report to the House either recommending that a bill be withdrawn or informing the House that the committee has agreed that the bill not be further proceeded with.

It will be just in advance of my motion that it will say that.

It further clarifies that:

In such circumstances, the final decision as to the fate of a bill lies with the House as a whole, and not...[with us], whose function is to discharge its mandate from the House and to report the bill.

They've told us to look at it; we've discharged our activity. Although the process for dealing with the report in the House varies from that for report stage, it's similar and still requires an hour of debate and a vote by the full House.

This will go to the House and will have a time. What I like about this is that Mr. Bergeron will get to put the concerns he raised into a speech in the House, which then needs to be considered by the government, with the flaws to our system. That gives a chance for each member of the House to talk about the problems that the bill attempted to address but that we feel it didn't address, so we have that time.

House of Commons Procedure and Practice says:

After considering a private Member's public bill, a committee may report to the House that it does not believe the bill should proceed any further. Once the report is presented, a notice of motion to concur in the report is automatically placed on the Notice Paper.

Therefore, it's not a case of moving concurrence or not; it's automatically on the Notice Paper.

It continues:

The motion stands in the name of the Member who presented the report, usually the Chair of the committee. No other notice of motion for concurrence in the report can be placed on the Notice Paper. The motion is taken up after Private Members' Hour on a day fixed by the Speaker.

The motion is deemed moved at the beginning of the debate and may be considered for not more than one hour. Each speech is limited to 10 minutes and there is no questions and comments period. At the end of the hour, or earlier if no other Members rise to speak, the Speaker puts the question on the motion. If requested, a recorded division on the motion is automatically deferred until the next Wednesday sitting.

That's a long explanation, none of which I knew before I had to look into how we do this. That would be where I would be going with this.

On principle, based on what the witnesses have said, we will be voting against the bill, but we don't care whether the chair reports the bill, and I don't think we'll get it reprinted, because I think it's going to waste money. Then we'll present another motion under Standing Order 97.1.

• (1225)

The Chair: Thank you.

Go ahead, Mr. Chong.

Hon. Michael Chong: I'm going to make one comment, and then I'm going to ask you to suspend for a minute so I can consult, because this affects House business.

First off, if the bill's not reported, then the unamended bill is reported back to the House.

Is that correct, Mr. Chair? It is. Okay.

There are a whole bunch of things in play here. Can we suspend for a couple of minutes so I can consult with some colleagues, because this impacts House business?

The Chair: We'll go to Madam McPherson and then we'll suspend.

Ms. Heather McPherson: I just want to clarify something that Rob brought forward.

If I understand correctly—and I want to make sure I understand correctly—what will happen is that nothing can happen in the House until this concurrence debate has been disposed of. It takes precedence over...

I guess my other question is, what are the implications on a House that is currently undertaking a point of privilege and has been for a very long time?

I would just like to understand a bit better what this actually means in the House.

The Chair: We'll go to the legislative assistants.

Mr. Jacques Mazziade: If you give the authority to the chair to report the bill back to the House, the bill will go on the order of precedence, at the bottom of the order of precedence. It will go up, and there will be a debate at report stage and at the third reading and there could be amendments there.

If you don't give the authority to the chair, next Monday there is another option. Next Monday the bill will be deemed reported back to the House, will be put at the bottom of the order of precedence. It will go up, and there will be a debate at report stage and third reading. If Mr. Oliphant moves his motion and the motion is adopted, as he explained and they explained it, it will be reported to the House and there will be a debate in the House on his motion, but the bill itself will still be on the order of precedence, and if his motion is adopted in the House, the bill will be removed from the order of precedence and the bill will die.

Ms. Heather McPherson: When will his motion be debated? That's the clarity I need.

Mr. Jacques Maziade: I think it's the Speaker with the whips who will decide a time to debate that.

Ms. Heather McPherson: I'm sorry to interrupt, but does that mean that there can be no other concurrence debates prior? Does that mean that there can be no other debates on the question of privilege? What does that do to that?

Mr. Jacques Maziade: No, it's not related. It's completely separate.

Ms. Heather McPherson: So there could be other concurrence debates brought forward this afternoon or whenever?

Mr. Jacques Maziade: On other items, you mean? Yes, absolutely.

Ms. Heather McPherson: Yes.

The Chair: Mr. Chong.

Hon. Michael Chong: I know there's a point of order and lots of references to this motion. I have not seen the motion, so I'd like to have a copy, Mr. Chair, of the motion that we are supposedly going to debate here in committee.

The Chair: Are you going to be providing copies?

Hon. Robert Oliphant: I will. After we suspend, I'll be able to finalize the motion, because I actually didn't know what would happen in this debate. We will have a copy of the motion, which we can distribute in both languages.

I would just say to remember that it won't be my motion in the House. It will be the report of the committee, which was because I moved it. It's not going to be my motion in the House. It will be a report—really, there are going to be two reports. There's either a report from the chair or a deemed report. It will be deemed reported back based on the bill itself.

So the House is going to deal with the bill based on either a report from the chair or, if he doesn't report, a deemed report from the committee and if the motion I present passes, there will be a separate motion that says we would have not an immediate but a concurrence debate on a report from this committee that's automatic. For most committee reports, someone needs to move concurrence to bother a debate. We've had a lot of those lately, but you can't then move a concurrence debate. It's automatic but it happens when the Speaker talks to the whips about House business and House leaders, and it's in consultation. I finally figured that out.

• (1230)

Ms. Heather McPherson: It does not interfere with other business.

Hon. Robert Oliphant: It does not interfere with business. It's private members' business.

Hon. Michael Chong: Mr. Chair, I ask that we not come out of suspension until we have a copy of the motion.

Thank you.

The Chair: We'll suspend for a good 10 minutes to allow that to occur as well.

The committee stands suspended.

• (1230)

(Pause)

• (1250)

The Chair: We'll now resume.

We'll turn to the legislative clerk, who, in his infinite wisdom, has further insights to share with us.

Mr. Legislative Clerk, you have the floor.

Mr. Jacques Maziade: Thank you, Mr. Chair.

During the suspension, I was reading pages 1159 and 1160 in the book. It's the chapter concerning a recommendation not to proceed further with the bill. I want to bring to the attention of the committee that it says that if the committee reports on the motion in relation to Standing Order 97.1:

It may happen that the committee presents its report prior to the expiry of the 60-sitting-day limit,

—and this is the case—

but the House does not make a final decision on the committee's recommendation until after this deadline has passed.

It says further that:

Since the committee has met the requirement of the Standing Order by presenting a report, the bill is not deemed reported back to the House. Instead, the bill remains with the committee until the House comes to a final decision on the committee's recommendation that the bill not proceed further.

I wanted to bring that to the committee for consideration.

Ms. Heather McPherson: Forgive me for not being so great on some of these things, but that means it would go to the House, we'd have a concurrence debate, and the concurrence debate would have to be voted upon. If the vote was to support it, then the bill would come back to the two hours of debate in the House.

Hon. Michael Chong: As I understand it, we make one report to the House under S. O. 97.1. The bill's been amended, and it's been essentially nullified. We either report the amended, null bill back to the House or we adopt Mr. Oliphant's motion and report that back to the House, not both.

Is that correct? It is. Yes, that's what I suspected, because it says "or".

That means that if we adopt this motion that Mr. Oliphant has presented, there will be no bill reported back to the House. The bill will remain here in committee. At some point, somebody could potentially move concurrence in this. The House will have a debate on it and either adopt the motion or negative the motion.

If the House adopts the motion, then this bill—in committee, I assume—is dissolved, and then we move on. It has the added benefit for the government, I would say, that instead of having to wait 30 or so parliamentary days for the private members' business calendar to move, allowing for the government to give its explanation as to why it negated the bill, the government could do so at a much earlier opportunity by moving concurrence in this report. That would be this motion.

Is that correct, Mr. Chair?

• (1255)

The Chair: Yes. As I understand it, that's correct.

Thank you for your prescience and your interpretive skills, Mr. Chong.

Hon. Robert Oliphant: On a point of order, I don't think that is of any advantage to government or opposition. I think that is due process. I would counsel us not to say that somehow the government would gain from that or lose from it. I don't think opposition would gain from it or lose it from it. It is due process.

Thank you.

The Chair: That's fair enough.

Go ahead, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: I'd just like to express my opinion on the matter.

We have to make a choice. We can send the bill back to the House to be defeated, or we can express, through Mr. Oliphant's motion, the concerns raised by certain witnesses and members of this committee regarding its content and instruct the government to respond in one way or another. The general message that needs to be sent, in my opinion, is that the current situation cannot simply be allowed to continue. I would hope that the government will take note of this.

It's certain that, if we simply send the bill back to the House to be defeated, we won't have the opportunity to send this message to the government. Mr. Oliphant's motion gives us a golden opportunity to do just that. With all its qualities and faults, this motion is the best option we have to make our point.

[*English*]

The Chair: Madam McPherson is next.

Ms. Heather McPherson: I just want to maybe push back a little bit on my colleague Mr. Bergeron on this. While I agree with him that I do want the opportunity for us to talk about why this bill didn't pass and why it also illustrates some of the needs that the government needs to address, my challenge is that we already do have that opportunity within private members' business, when there will be two additional hours of debate in which we are able to talk about why we can or cannot support this bill. In that place, we can also talk about why...or what the government needs to do to address the challenges that this bill attempts to address.

The Chair: Go ahead, MP Oliphant.

Hon. Robert Oliphant: I would prefer the option under Standing Order 97.1 because I actually think that committee work is important. I think that if we allow it just to go either unreported, as deemed reported or without a clear statement from this committee, we're not valuing the committee work.

I think that we have the advantage of having had a number of meetings with many witnesses who told us things. I think that the House would like to hear from us, not just as individuals speaking in the House but because I think it values our work.

As such, I will now move this motion. I know I'm jumping the queue, but I believe it's in order for me to move this motion:

That the committee, pursuant to Standing Order 97.1, recommend that the House of Commons do not proceed further with Bill C-353, an act to provide for the imposition of restrictive measures against foreign hostage takers and those who practice arbitrary detention in state-to-state relations and to make related amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Immigration and Refugee Protection Act, because the overwhelming majority of witnesses appearing before the committee have raised serious concerns with this legislation, have indicated that it is not necessary at this time and that it may have unintended consequences. This does not negate the objectives of this bill, and the committee draws the concerns the bill is attempting to address to the attention of the government;

That the chair present the report to the House.

• (1300)

The Chair: Go ahead, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: The first explanation the legislative clerk gave us was that there would be a report to the House on the bill and that there would also be the report arising from the motion presented by Mr. Oliphant. Now, as I understand it, that's no longer the scenario.

[*English*]

The Chair: That's correct, Mr. Bergeron.

Does anyone else want to speak to this? No.

Having given an opportunity to speak to everyone, at this juncture I would just like to thank the two legislative clerks.

Do we want to proceed with the vote?

Hon. Hedy Fry: Yes, there's a motion on the floor.

The Chair: Okay. Let's do it on a recorded division.

(Motion agreed to: yeas 6; nays 5)

The Chair: At this juncture, I would like to thank the two legislative clerks, who have been very helpful.

I think it's also fair that we thank the committee clerk as well, who did most of the hard work today, making sure that there were recorded divisions for most of the votes.

Go ahead, Mr. Bergeron.

[*Translation*]

Mr. Stéphane Bergeron: Mr. Chair, I would like you to enlighten me on the agenda for Thursday.

According to the schedule, we should be undertaking the study on Latin America. The problem is that we don't have a work plan. I don't know what stage we're at with the Iran report. I think, in the case of this report, that our instructions have not even been given to our analysts. I also don't know what's happening with the report on Palestine.

I'm a bit confused regarding what's scheduled for Thursday.

[English]

The Chair: On the report on the two-state solution, as was indicated previously, we will be hearing from the analysts on December 5.... I'm sorry; what day would that make it?

The Clerk of the Committee (Mr. Alexandre (Sacha) Vassiliev): It should be December 10 and 12.

The Chair: When are we getting the actual report?

The Clerk: The report should be delivered this Friday.

The Chair: This Friday we will receive the report.

As for the Latin American study, we're going to be starting it and hearing from officials on Thursday. However, we have yet to have an opportunity to go through the scoping exercise that the analysts have put together, so we will discuss that. If everyone agrees here, we can set aside 20 minutes for committee business, as well, to discuss the other issues that you've raised.

Is that okay with everyone?

Go ahead, Mr. Chong.

Hon. Michael Chong: What do we have this Thursday?

The Chair: We have the Latin American study. We will start with officials.

Hon. Michael Chong: Okay, and then what about next week, on Tuesday?

The Chair: Next Tuesday, we will discuss the two-state solution.

Hon. Michael Chong: Next week, on Thursday, we have an hour with the minister.

A voice: Both ministers....

Hon. Michael Chong: Sorry, two hours—

The Chair: It's just been updated. We've just heard that the second minister will also be showing up next Thursday.

Hon. Michael Chong: What are the two hours going to be taken up with?

• (1305)

The Chair: Are you asking about Thursday?

Hon. Michael Chong: Yes.

The Clerk: The first hour is the two ministers. For the second hour, we can do the report as originally planned.

The Chair: For the first hour, as originally planned, we can do the two ministers, and then for the second hour, we can do the report.

Hon. Michael Chong: I would like to have two hours with the ministers rather than one hour with two ministers. At minimum, I would like to have an hour with the ministers, if that's all we're getting, and a second hour with departmental officials, which we normally would do.

The Chair: Did they indicate how long they can stay?

Mr. Stéphane Bergeron: Can we have one hour with one minister and one hour with the other minister?

[Translation]

Hon. Michael Chong: I've already asked for this. That's our first choice. The second option would be to request the appearance of the two ministers for one hour and request the appearance of the officials for a second hour.

[English]

I think the committee's wish, as expressed here, and our preference is to have one hour with one minister and a second hour with the second minister. If that isn't available, then we will have one hour with both ministers and a second hour with departmental officials.

M. Stéphane Bergeron: That other option, I think—

The Chair: What we will undertake to do is to see if that is a possibility. It doesn't seem so, given what they have communicated to us.

Hon. Michael Chong: The second option is definitely available.

The Chair: Yes, the second option would be, but we'll endeavour to do the ideal situation—

Hon. Michael Chong: I'll go pick them up; it's three minutes.

The Chair: —which is to split them up.

The Clerk: Are we just doing the briefing, or does the committee want to hear about the supplementary estimates as well?

The Chair: Are we just doing a briefing, or the supplementaries as well?

Hon. Michael Chong: I would like to also review the estimates as part of this.

The Chair: Yes, so supplementary estimates.... Is there anything more we have to do on this? We didn't complete it. Is that fine?

All of that having been explained, this committee stands adjourned.

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